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### **Enabling the Disabled: Ensuring Equality By Social Construction and Reasonable Adjustments in Indo-Uk Context**

by  
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#### **I. INTRODUCTION**

"We share in 1981 a responsibility which will be historically judged by future generations. Persons with disabilities shall be treated as true citizens of their respective countries, enjoying all the rights man is heir to...If we are to live up to the principles embodied in the goals of the Year... Governments must work to equalize opportunities...in all aspects of daily life.... This requires the development of new approaches towards rehabilitation which de-emphasize the institutional approach"<sup>1</sup>.

The ideological construction of the concept of disability has been determined by the core ideology of individualism, capitalism, medicalisation. In other words these ideas have generated and perpetuated a particular view of disabled persons. Infact the concept of disability and its definitions are not rationally determined but socially constructed and disability is determined by the social meanings which are attached to specific physical and mental impairments. In this part of the paper the aspects of social construction and social creationist accounts of disablement will be discussed.

Quite understandably, a disabling condition can be acquired at any stage of life. It may be due to the deformity or congenital disease but the important issue is to see how we respond to such disabling condition both as an individual and as a member of the society. But policy definitions of disability is a herculean task and it has great impact on the functional definition of the term 'disability'. Undoubtedly the core and peripheral ideologies have



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immensely influenced the concept and it has become a problem of personal disadvantage<sup>2</sup>.

In pre-industrialization period, people were living in joint families and the job assigned to them was according to their capabilities and it fulfilled the co-operative requirements for corporate survival. While others, who could not stay with their families were ostracized and their survival was threatened, because there was a popular conception that such persons were monsters and therefore unworthy of human status. Some became homeless and others were dislocated for other various reasons such as poverty or shame. Undoubtedly, various religious communities came forward and supported these people in a number of ways. It included the promotion and seeking of cures by actions of purging, rituals, providing care, hospitality, services as acts of mercy to "needy strangers"<sup>3</sup>.

Further, in the end of nineteenth century people with impairments were labeled as 'the blind' 'crippled', 'the deaf', the insane', 'defectives' and 'epileptics' and they were hidden from the public appearances. The public at large had different opinions about disability. According to one approach, they were pursued by God for sinning whilst others believed that they were under the hostile influence of the planet Saturn. Few others opined that they were closer to God and would go to heaven soon<sup>4</sup>. Gradually

the network of hospitals emerged for the protection of disabled persons in religious establishments. In medieval England, the hospitals for leprosy, blindness or physical disability were constructed. In 13<sup>th</sup> century the first mental hospital 'Bedlam', which is known as 'Bethlam Hospital', was built in the city of London. The sole purpose of building this hospital was to house mentally sick people<sup>5</sup>. This is the first formal institution for disabled people in England<sup>6</sup>. With the same objective in mind 'almshouses' were also built for the disabled and elderly disabled persons<sup>7</sup>.

It is significant to note that since 1980's, there is huge expansion of initiatives and measures focussing on the disability issues at the regional and

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international level. However, the hidden assumptions are to be identified in order to explain the reasons of low impact of these initiatives across the globe. It is also worth noting that hidden assumptions are negative in nature and are permeated in the social set up in such a way that it has become a personal tragedy for individuals suffering from disability<sup>8</sup>.

## II. BIOPSYCHOSOCIAL MODEL OF DISABILITY


The biopsychosocial model ("BPS") is a broad view that attributes disease causation or disease outcome to the intricate, variable interaction of biological factors (genetic, biochemical, etc), psychological factors (mood, personality, behavior, etc), and social factors (cultural, familial, socioeconomic, medical, etc). In simple sense it is a theoretical framework that posits biological, psychological and social factors all play a significant role in human disease or illness and health, rather than biology alone.

The 'bio' component of this 'Biopsychosocial' model of disability examines disability in context of biology which influences the health of such individuals. It includes the aspects like brain changes, genetics, and the functions of major body organs, like liver, the kidneys and the motor set up of the human body. For instance, Joe met with an accident and there was reduced movement in his right arm. These biological changes in the body of an individual have an impact on the mindset of such person and it may lead to anxiety, low self-esteem and depression in certain cases.

Similarly, the 'psycho' component of the abovementioned theory evaluates psychological components, such as thoughts, emotions, or behaviors. Joe might have gone through various psychological changes. He might have experienced fear of judgment or inefficiency at his workplace or in life. All these situations or changes would certainly have an impact on the behavior of such persons and they might like to stay at home without mingling with his or her friends or relatives. Consequently, the injuries or situations might take worse turns leading to further depression and anxiety.



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Further, the 'social' component of this model takes social factors into account and it includes the influence on the health of an individual, or the interactions with other person. Undoubtedly, it will have an impact on the role of such person in the family and the relationship with the family members. It may aggravate the problems with the spouse and the children which may further lead to various social, biological and psychological problems.

Thus it can be safely concluded that the elements of the BPS model are all interconnected. The biological aspect may affect psychology, which may affect social well-being, and it may further affect biology and this interrelation goes on. In this example, Joe's biological state changed, which affected his psychological state as well as the social interactions or social relationships, which all went on to affect each other over again<sup>9</sup>.

### **III. SOCIAL POLICIES ON DISABILITY**

The focus of this paper is on social aspect of disability as mentioned in the 'Biopsychosocial model of disability'. In this context a closer look at history reveals that the societies across the globe have attempted to describe the aspect of disability in the existing social order. In Neolithic tribes skull surgeries were performed to relieve the disabled persons from evil spirits. Ancient Greeks believed that persons suffering from disability are not human at all therefore they should be abandoned. In Greek city states of Sparta and Athens disabled persons were permitted to be killed if they could not contribute to their basic survival so much so that even birth marks were sufficient, apparently as bad omens, to warrant death<sup>10</sup>. Plato was of the opinion that the persons suffering from disability are standing in the way of perfect world and in his book "the Republic"<sup>11</sup> he viewed that the offspring of the inferior person shall be put in some mysterious and unknown place. Plato's Republic is one of the first, foundational philosophical texts to specifically argue that an ideal city governed by reasonableness should actively kill individuals with intellectual and physical disabilities because such individuals embody injustice as the lack of order<sup>12</sup>. Similarly Romans borrowed the concept of 'reciprocity'<sup>13</sup> from Greeks and like Greeks they were also in favor of abandoning disabled and deformed infants. They justified their actions by arguing that these children are not fully human being.



In Middle Ages too, disability was explained in moral and spiritual terms and persons with disabilities were considered as if they were out of harmony with God and they were rejected by society.

It is worth noting that unique English institutions known as 'madhouses' emerged and they mainly catered to the 'mentally distressed' people only. However, with the passage of time the charity school movement led to the establishment of 'special schools' for deaf, dumb and blind children. Thereafter, these people were sent to the institutions because the idea that the institutions are the 'right place' for people with disabilities.

The 19<sup>th</sup> Century has witnessed the mushrooming growth of the buildings because the industrial revolution had great impact on the English landscape. Consequently, 'lunatic asylums' were dominating the architecture in England. At this point of time, a few hundred people were living in nine small charitable asylums. By 1900, more than



100,000 'idiots and lunatics' were in 120 county pauper asylums. The major reason was that society now thought of giving financial and social relief to people in their own homes<sup>14</sup>.

During 20<sup>th</sup> Century, especially in 1970's and 1980's, disabled activists and their organizations in European region become vocal in their dismissal of the individual and medical understanding of disability and focused on the psychological and social welfare implications. In 1975, it was the Union of the physically impaired Against Segregation (UPIAS) that codified the document that people were disabled not by their impairments but by the society<sup>15</sup>.

A number of legislations in United Kingdom<sup>16</sup> came into existence reflecting the social model of disability. National Health Service Act, 1946 was meant for England and Wales. In fact the title 'National Health Service' provides for a single health service for the United Kingdom. However, there is one National Health Service (NHS) which was created for England and Wales and it is accountable to the Secretary of State for Health. On the other hand, there is a separate National Health Service (NHS) which is created for Scotland and it is accountable to the Secretary of State for Scotland. This legislation provided people in Britain with free diagnosis and treatment of illness, at home or in hospital, as well as dental and ophthalmic services.



Further, the Chronically Sick and Disabled Persons Act, 1970 was a turning point on the road to equality and it has been described as 'a Magna Carta' in the history of rights for the persons suffering from disability. It has played an important role in transforming official policy. This Act has focused on various specific provisions which aimed to improve an access and support for persons suffering from disabilities. It dealt with the expansion of community based provisions such as assistance at home, at day centres, respite centres, and it also provides meal on wheels services and other community based services. A code of practice was also introduced for buildings that were open to the public, requiring them to provide parking, where applicable, and sanitary facilities for people with disabilities. Local Authorities were also required to provide disabled access to public toilets and were given the power to order owners of buildings to conform to the act and provide toilet and other facilities that were accessible to all. This included school, universities, railways, shops and offices.

Indeed in 1981 Disabled Peoples International (DPI) came into existence and as a result the formation of the British Council of Organizations of Disabled People (BCODP). BCODP took the lead from DPI which was about equal rights for disabled people, rights to education, employment, benefits, and housing.

The Disability Discrimination Act, 1995 (DDA) is a comprehensive legislation which came into force in December 1996. It has remained a core piece of legislation in this area although it has been significantly amended in 2006. The discrimination against persons with disabilities has been made illegal in the sectors of education, employment, transport and basic services and goods. The Act has also imposed a duty on the employers to make 'reasonable adjustments' to working practice or the environment so that someone who has disabilities is not disadvantaged at the workplace. The adjustments includes flexibility in the working hours, allowing time off for the treatment, modification of the equipments or an adjustment of the premises. The central aim is to provide an easy and affordable access to the services at the workplaces.

Part II of this Act protects the persons suffering from disabilities from discrimination in the field of employment<sup>17</sup>. The Act mentions that it is unlawful for an employer to discriminate against a disabled person in the arrangements made for determining who should be offered employment<sup>18</sup>. Part III of the Act places an obligation on the public bodies to make

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buildings accessible for disabled persons. Public bodies are to make their public buildings accessible by year 2015 to persons with disabilities. It includes refitting of older public buildings. However a minister may make an order to exclude certain public buildings if he is satisfied that such buildings are either used as public buildings on temporary basis or will not be used as public buildings after 3 years.

Section 29-31 of Disability discrimination Act, 1995 placed educational institutions under a duty to encourage access for and integration of disabled pupils and students at all levels of education. Section 28A of the Act deals with the provision that it is unlawful for the 'responsible body'<sup>19</sup> for a school to discriminate against a disabled pupil<sup>20</sup> in the arrangement for determining admission to the school or by refusing or deliberately rejecting an application for his admission to school. It is also unlawful for body responsible of a school to discriminate against disabled students by excluding them either permanently or temporarily. The discrimination may be way of less favorable treatment or a failure to make reasonable adjustments.

The Disability Rights Commission (DRC) was established in the year 1997 and it is upholding the rights enumerated in the Disability Discrimination Act, 1995. It has played a significant role by providing advice and information to the people suffering from disability. It is important to note that in 2005, the Office for Disability Issues, was set up as a cross-government organization to co-ordinate disability policy. Further, in 2007 the Disability Rights Commission was merged with the Equal Opportunities Commission and the Commission for Racial Equality and a single body namely, the Equality and Human Rights Commission (EHRC) was constituted.

United Nations took the initiative for the promotion and protection of the rights of the people suffering from disability and UN Convention on the Rights of Persons with Disabilities, 2008 was formulated, which obliged members to eradicate discrimination against persons with disabilities at all levels.

In 2010, Equality Act (EA) came into existence and it has not only strengthened but simplified the discrimination laws. It brought together the legislations on the grounds of race, sex, disability, sexual orientation, religion, marriage and civil partnerships, gender reassignment and age under one legislation. Most of the Disability Discrimination Act, 1995 was replaced by this new legislation but the disability equality duty in the DDA

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continues to apply. In many instances, the new law has transferred the same rights and protections from the DDA to the EA, often using the same terminology. However, in a few areas, the law has been modified<sup>21</sup>.

On the other hand, India has an important experience in making policy and proactive with respect to disabled persons from as early as 1872. In 19<sup>th</sup> Century

Indian Lunacy Act, 1912 had specify provisions for mentally ill and retarded persons. In post independence period Article 41 of the Indian Constitution specifically deals with the 'relief for disabled and unemployable persons'. However it was in 1980's that the policy commitment to full participation of persons with disabilities in the Indian set up evolved. It has also been reflected in various key pieces of legislation such as Mental Health Act, 1987, Rehabilitation Council of India Act, 1992 (amended in 2000), the National Trust Act, 1999, the Persons with Disabilities Act, 1995 and National Policy on Disability, 2006. The major legislation among all these is the Persons with Disabilities Act, 1995. The Act is based on the philosophy of promotion, protection, equalization of opportunities, non-discrimination and affirmative action in favour of disabled persons. The idea is to build a bridge between the medical and social model of disability.

Undoubtedly, India has made wonderful efforts by adopting policies for social construction. It includes national policies in the year 1986 and 2006. The objective of the national policy on education, 1986 was to integrate the physically and mentally handicapped with the general community as equal partners, to prepare them for normal growth and to enable them to face life with courage and confidence. In India Sarva Shiksha Abhiyan<sup>22</sup> (SSA) is another scheme which aims at ensuring that every child with special needs, irrespective of the kind, category and degree of disability, is provided meaningful and quality education. It has adopted a zero rejection policy. It supports inclusion of children with disabilities at early childhood as well as at the elementary level. Thus it has focused on the goal of universalisation of elementary education. Moreover, it is interesting to note that Indian Prime Minister Narendra Modi referred persons with disabilities with another term 'divyang' and but it has led to a lot of confusion with respect to welfare benefits. The major reason is that with no clear definition of 'divyang'<sup>23</sup> has been notified officially therefore, budgetary provisions remain vague<sup>24</sup>.

Sadly, in India despite various policies, programmes and legislations, the society has failed to provide recluse to this section at many fronts.

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For instance, the Persons with Disabilities Act, 1995 (the Act) mandates 3% reservation in government and public sector jobs, but it is never fully complied with. Moreover, employment is restricted only to certain 'identified' posts, which is discriminatory, and there is no concept of reasonable accommodation for persons with disabilities. Furthermore, the reservation is restricted to people with locomotor, hearing and visual impairments. Thus persons with other disabilities like intellectual, psychosocial and multiple impairments are not even considered employable by the laws of the country. On the similar lines, there is rampant discrimination in the private sector, where there is neither proper reservation system nor an anti-discrimination law to prevent discrimination against persons with disabilities. About 98% of persons with disabilities registered under the MNREGA have not been given a job<sup>25</sup>. In the year 2011-12, the number of persons with disabilities that were registered was 999, 211 and only 16,436 were given work<sup>26</sup>. There is hardly any support from the government for assistive technologies, interpreters, attendants, accessible transport, and rehabilitation, to enable persons with disabilities to take up training and employment on an equal basis with others. There is no system to cover disability costs, while social security/unemployment allowances are meager or nonexistent in many parts of the country<sup>27</sup>.

#### **IV. REASONABLE ADJUSTMENTS**



The term "Reasonable accommodation" has been given the meaning in Article 2 of UNCRPD, which means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms<sup>28</sup>.

Modern human rights regime dates back to the years following horrendous Second World War. Universal Declaration of human rights was a wonderful document adopted in 1948 to promote the human rights of the all individuals across the globe. International Covenant on Civil and Political Rights and International Covenant on Socio, cultural and Economic Rights further require states to confer and protect the rights at universal basis irrespective of the disability of the persons.



Undoubtedly, the rights enumerated in international documents go a considerable way to solve the problems of exclusion, neglect and humiliation which are experienced by the disabled people across the globe. It is important to highlight that the potential of various human rights conferred on the disabled persons have been underdeveloped. The separation is caused by their inability to access mainstream due to physical or social barriers. It is also evident that this section of the society is not fully incorporated in the education and employment sector. Though it is argued by many that children with disability should be taught in the mainstream schools along with their non-disabled counterparts, but the it is worth mentioning that 'equal application' of this education setup is not a straight-forward formula. Moreover there is an unending debate and it has two dimensions. These are 'formal equality' and 'substantive equality'. Former is based on 'equals should be treated alike', which means in similar situations people should be treated alike despite differences in their circumstances. In other words, all individuals should be treated equally irrespective of their genders, racial background or physical impairments. This notion of equality underlies the references which are frequently made to the idea that democratic society is 'founded on the principle that each individual has equal value' and their rights should be protected accordingly<sup>29</sup>. However this application of system of 'formal equality' begs' the question of what should be regarded as a relevant differences and how different people should be treated in similar situations.

It is pertinent to mention that Ronald Dworkin had also given the division between notions of formal equality and substantive equality and viewed that the equal treatment of people in terms of division of resources is different from the treatment of people as equals. This type of treatment is a manifestation of commitment to the view that people are entitled to equal concern and respect from the state<sup>30</sup>.

The notion of reasonable adjustments or accommodations also seems to have been recognised in the context of civil and political rights prior to the Convention on Rights of Persons with Disabilities, 2006(UNCRPD). In case of *Hamilton v. Jamaica*<sup>31</sup>, a paralysed prisoner who was detained in custody, was unable to slop out of his cell and could not climb the bed. It was held that prison authorities had failed to treat that prisoner with humanity. Thus it was violative of Article 10 of ICCPR.

Unquestionably, the Disability Discrimination Act, 1995 has provided that the employer can take the plea of justification where it can be shown that a less favorable treatment of a less physically challenged person is a

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reason that `is both material to the circumstances of a particular case and substantial<sup>32</sup>. The employers are to make reasonable adjustments<sup>33</sup>. As mentioned above the term `reasonable adjustments' includes making adjustments to premises and alteration of policies and practices. An employer who fails to comply with the duty to make reasonable adjustments unjustifiably is liable for discrimination. However, an exclusion of employer who has employed less than 20 employees from the purview of the Act is considered as a flaw in the law<sup>34</sup>. The employment provisions of the Act are enforceable in the tribunal system and the tribunal can make an award of unlimited compensation to the complainant. The recommendations can be made to prevent future discrimination against the Physically Challenged Persons<sup>35</sup>.

Under the Disability Discrimination Act, 1995 service providers must also provide reasonable adjustments for physically challenged people to enable them to access their services. There are four main types of adjustments:

1. It could be by changing policies, practices and procedures. For instance, the persons suffering from disability might make appointments through phones or email, text or in person. Further, a person with disability may like to be accompanied by someone with whom he is comfortable with such as his friend, family member or counsel.
2. The adjustment could be made by providing auxiliary aids or services i.e. by providing discreet assistance to people with reading and writing difficulties or the provision of human aids to communication, such as communicator guides or interpreters.
3. The adjustment may also happen by providing an alternative place because the usual service place is inaccessible e.g. if a doctor's clinic is located at a place which is not approachable by the disabled person then the doctor could hold the appointment for a physically challenged person at a more accessible part of the hospital.
4. To remove, amend or avoid physical barriers to the place. It may be done by removal of steps or by constructing ramps or by any other accessible entrance or by providing assistance to such persons.

The case of *Royal Bank of Scotland Group Plc v. David Allen*<sup>36</sup> has dealt with the issue of reasonable adjustments and it is held in this case that it is the duty of service provider to make provision of lift to assist access to building. In this case there was a young man who suffered from Duchenne Muscular Dystrophy who had been using an electric wheelchair from an

early age. He had a bank account with the Royal Bank of Scotland at its main branch in Sheffield. The main branch was in a listed building and access to all of the entrances was gained by flights of stone steps. The branch was therefore inaccessible to wheelchair users. Two potential adjustments were before the court. The first proposed adjustment was installing a lift in the lobby area and the second was installing a lift in the banking hall. The Respondent did not raise an objection on the grounds of cost. It was viewed by his Honour Judge Dowse, at first instance that the Bank had discriminated against the Claimant contrary to S. 19 (1)(b) and awarded the Claimant £6,500 for injury to feelings. The Bank was also ordered to install a platform



lift in the banking hall. The Bank appealed the order to install the lift but not the award for injury to feelings. The Court of Appeal pointed that installing a platform lift would have been a reasonable adjustment and found that the bank had failed to make an adjustment.

Under the Equality Act, 2010 the law lets employers to do some kinds of positive action. Under the Equality Act, carers of disabled and older people get protection. For instance a company is looking for staff. A woman, who has a disabled daughter, applies for a job. The company must not turn her down just because they think she will take too much time off work to care for her daughter.

A duty is imposed under the Equality act, 2010 to make adjustments on a person then such person is required to follow a criterion or practice so that a disabled person is not at a substantial disadvantage<sup>37</sup>. The second requirement is that in case a disabled person is at a substantial disadvantage due to the presence of physical obstacles in comparison with the persons who are able-bodied, then that person has to take such steps as it is reasonable in order to avoid such disadvantage. This includes the removal of physical features, or an alteration of in question or altering it or providing a reasonable means of avoiding it. Thirdly when a person with disability is not provided an auxiliary aid then reasonable steps must be taken to provide him auxiliary aid.

The Americans with Disabilities Act (ADA), passed in 1990, is civil rights legislation governed by the Department of Justice. The goal of this law is to make sure that people with disabilities can have an equal opportunity to participate in programs, services, and activities. The Act makes it possible for everyone with a disability to live a life of freedom and equality. Passed by the Congress and signed into law by the President on July 26, 1990, the ADA is the first comprehensive declaration of equality for people with disabilities. The ADA protects the civil rights of people with disabilities in all aspects of employment, in accessing public services such as transportation, and guaranteeing access to public accommodations such as



restaurants, stores, hotels and other types of buildings to which the public has access.

In order to harmonize the provisions of the UN Convention on Disabilities (to which India is a party) with the Indian municipal laws, several verdicts of the Indian judiciary have positive impact to provide specific relief to persons with disability. Indian domestic law contains several specific provisions for work and employment opportunities of persons with disability. In *Ranjit Kumar Rajak v. SBI*<sup>38</sup>, the Bombay High Court considered the case of an applicant to the post of a probationary office in the State Bank of India. The applicant was declared medically unfit because he had undergone a renal transplant in 2004 and therefore, he was denied the post. He approached the Bombay High Court challenging his dismissal basing his challenge on medical reports indicating that he was fit to perform his duties. The Bank contended, among other things, that by the governing rules, the Bank was required to reimburse the medical expenses incurred by Bank officers and if it employed Rajak, such expenses would be too high to borne by the Bank. The Court discussed provisions of the United Nation Convention on Rights of Persons with Disabilities (CRPD) at length. The Court cited Article 27 of the Convention which recognizes the right to work and employment and obligates state parties to take appropriate steps detailed under the provision. Further, the Court also referred to the definition of "reasonable accommodation" under Article 2 interpreted "undue burden" with reference to the

paper of the Ad Hoc Committee on the Convention. The Court recognized that was no law based on the CRPD, the Court incorporated “reasonable accommodation” under Articles 14, 16 and Article 21 of the Constitution. The Court pointed that reasonable accommodation (based on the U.N. Protocol) when read together with Article 21 of the Constitution of India is not in conflict with Municipal law. On the contrary, it is an addition to the ever expanding concept of life and its enjoyment.

Further in India the Rights of Persons with Disabilities Bill, 2014, Section 19 pertains to “non discrimination in employment” and it specified that every establishment shall provide “appropriate environment” to persons with disabilities. “Appropriate environment” is not defined under the Bill and no promotion shall be denied to a person merely on the ground of disability. Therefore, the provisions relating to the workplace environment with respect to persons with disabilities is extremely vague and not in compliance with the UNCRPD.

It is very sad to mention that in India the accessibility of various facilities to persons with disabilities is abysmally low because of architectural barriers, educational barriers, attitudinal barriers and social barriers. It is

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an irony that vulnerable sections of the community have to suffer due to such inaccessibility. The roads, buildings and public transportation is inaccessible. Despite the legislation the public transport authorities especially bus transports have no concrete plans to modify or revamp their services in order to make the same more disability friendly. Due to the lack of an accessible built environment the persons with disabilities are forced to live a life of seclusion and they are deprived of several employment opportunities. This further reinforces the vicious circle of disability and poverty. The persons with disabilities are perceived to be unproductive, and sometimes even their family members shun them<sup>39</sup>.

## **V. RECENT INITIATIVES**

In a wonderful initiative towards reasonable adjustment, Australia's has introduced new \$5 banknotes. It has many security features<sup>40</sup>. The new series also includes a ‘tactile’ feature to help the vision-impaired community distinguish between different banknote denominations. The tactile feature on the \$5 banknote is one raised bump on each of the long edges of the banknote next to the top-to-bottom window<sup>41</sup>.

In London also the “please offer me a seat” badges, which are similar to the popular Baby on Board badges, are being trialed from next month to help passengers who need a seat, but often have difficulty getting one. It is interesting to note that Transport for London (TfL) is recruiting 1,000 people to take part in the European-first six-week trial to assess how successful it is for passengers to use and the reactions of others. They will also be given a card that can be shown to TfL staff. It would help people with hidden disabilities and conditions, or those undergoing treatments, because they find it difficult to get a seat when they need one especially if their need isn't obvious. Mayor of London Sadiq Khan viewed “we hope that these new blue badges can make a real difference to those who find it difficult to get a seat when they need one, particularly those with hidden disabilities. Everyone who travels around London knows about the success of the Baby on Board badges. I want Londoners to embrace our new trial and help these blue badges become as instantly-recognizable, giving confidence to those wearing them on public transport across London”<sup>42</sup>.

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## VI. CONCLUSION

The main argument is that the social construction has provided the additional entitlements to the persons with disabilities. However, despite the legislative changes at the international and national levels, the lives of many people have not changed. The challenge remains to ensure that the statements and commitments have an impact on the lives of people with disabilities at the local and national level. To that end, many efforts have been made on strengthening enforcement mechanisms related to disability rights and monitoring government compliance with human rights obligations<sup>43</sup>. It is important to highlight that in developed countries like the United Kingdom (U.K.) tremendous efforts have been made in the form of laws and support services. However an effective implementation of such measures is still a distant dream. While in developing countries like India, the issue of disability needs to be treated with more diligence, for instance, in India the majority of the disabled persons live in isolated rural areas<sup>44</sup> and consequently are sincerely neglected. Although the Constitution of India guarantees persons with disabilities the full range of civil, political, economic, cultural and social rights, the arrangements necessary to translate the constitutional guarantees into reality have been conspicuously absent until recently. Moreover, in countries like India, the problem is made more complex by the fact that physically challenged persons are usually extremely poor<sup>45</sup>.

Unquestionably, it is clear from the above discussion that a duty or positive obligation is imposed on the employers, educators, public authorities and others to identify barriers in the way of a physically challenged person's enjoyment of human rights and appropriate steps should be taken to remove such barriers with an objective to integrate this section of the society in the mainstream set up. The focus is on the barriers which require steps to be taken in a particular case or on the need to respond to the specific circumstances of the individual disabled person. It may involve cost-effective measures, such as special equipment or support or an improvement in the physical access to the buildings or work place.

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<sup>1</sup> Mrs. Leticia Shahani, United Nations secretariat, available at <http://www.un.org/esa/socdev/enable/dis50y40.htm>.

<sup>2</sup> Colin Barnes, *Disabled People in Britain and Discrimination: A Case for Anti-Discrimination Legislation*, (Hurst & Co Ltd. in association with the British Council of Organizations of Disabled People 1991) [www.disability-studies.leeds.ac.uk/files/library/Barnes-Barnes-dissertation.pdf](http://www.disability-studies.leeds.ac.uk/files/library/Barnes-Barnes-dissertation.pdf) accessed on 14 October 2014.

<sup>3</sup> "Disability in the medieval period 1050-1485", available at: <https://www.historicengland.org.uk/research/inclusive-heritage/disability-history/1050-1485/>, (accessed on April 12, 2015).

<sup>4</sup> Disability in the medieval period 1050-1485, [www.historicengland.org.uk/research/inclusive-heritage/disability-history/1050-1485/](http://www.historicengland.org.uk/research/inclusive-heritage/disability-history/1050-1485/) accessed 12 April 2015.

<sup>5</sup> Melanie Close, 'Timeline History of the Disabled People's Movement' [www.disability-equality.org.uk/uploads/files/fb979acea0dfe4ec8163fc610ffcf305.pdf](http://www.disability-equality.org.uk/uploads/files/fb979acea0dfe4ec8163fc610ffcf305.pdf) accessed 17 February 2015.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Michel Oliver, Colin Barnes, *The New Politics of Disablement*, Palgrave Macmillan, 2012.

<sup>9</sup> <http://study.com/academy/lesson/what-is-the-biopsychosocial-model-definition-example.html> accessed 7th



September, 2016.

<sup>10</sup> Available at: <http://www.bamaed.ua.edu/spe300/History.html>, (accessed on April 20, 2015).

<sup>11</sup> Plato of Athens, *The Republic*, 355 BC.

<sup>12</sup> Thomas Joseph Kiefer, "Reason and Normative Embodiment in Plato's Republic: On the Philosophical Creation of Disability", 34 *DSQ* 1 (2014).

<sup>13</sup> Reciprocity is the notion of mutual exchange or fair return.

<sup>14</sup> <http://historicengland.org.uk/research/inclusive-heritage/disability-history/1882-1914?> accessed 7<sup>th</sup> September, 2016.

<sup>15</sup> Michel Oliver, Colin Barnes, op.cit 7.

<sup>16</sup> UK includes Britain and Northern Ireland. Further Britain includes England, Wales and Scotland. Within UK there are three distinct court systems: England and Wales share one while Scotland and Northern Ireland each have their own. However, House of Lords is the court of final appeal for each of the court systems.

<sup>17</sup> Section 68 of the Act states that 'employment' means employment under a contract of service or of apprenticeship or a contract personally to do any work. 'Employee' means anyone whose contract is within that definition of employment whether he works full time or is employee for other purposes.

<sup>18</sup> Section 4(1) of the Act (Disability Discrimination Act, 1995).

<sup>19</sup> 'Responsible body' is a discipline Committee of the governing body under Section 28 L (6) of Disability Discrimination Act (DDA), 1995.

<sup>20</sup> In England and Wales, its meaning is in Section 3(1) of Education Act, 1996. In Scotland, its meaning is given under section 135(1) of Education Scotland Act, 1980.

<sup>21</sup> The Disability Discrimination Act and the Equality Act available at <http://www.aidsmap.com/The-iDisability-Discrimination-Act-and-the-iEquality-Act/page/1497533/accessed> on 23<sup>th</sup> May, 2014.

<sup>22</sup> Sarv Shiksha Abhiyan means 'Education for All'(EFA).

<sup>23</sup> 'Divyang' comes close to the English term 'differently-abled'.

<sup>24</sup> Available at: <http://www.dnaindia.com/money/report-budget-2016-social-justice-ministry-allocated-rs-7350-crore-2184066>.

<sup>25</sup> Source: Joint Stakeholders report on Caste Based Discrimination in India, 13<sup>th</sup> Session of the Universal Periodic Review of the UN Human Rights Council — India (21<sup>st</sup> May - 1<sup>st</sup> June 2012), submitted by National Coalition for Strengthening PoA Act, Initiation of National Campaign on Dalit Human Rights (NCDHR).

<sup>26</sup> Source: Universal Periodic Review: India: Key Issues of 120 Million Persons with Disabilities in India, submitted by National Disability Network, available at.

<sup>27</sup> Status Report for XII Plan by Ministry of Social Justice and Empowerment, Government of India (2011).

<sup>28</sup> UNCRPD, Article 2.

<sup>29</sup> *Ghaidan v. Godin-Mendoza*, (2004) 2 AC 557 : (2004) 3 WLR 113 : 2004 UKHL 30.

<sup>30</sup> R. Dworkin, *A Matter of Principle*, 190-198 (Oxford University Press, 1986)s.

<sup>31</sup> Communication No. 616/1995.

<sup>32</sup> Section 5(1)(b).

<sup>33</sup> Section 6.

<sup>34</sup> Brian Doyle, "Physically challenged Workers Rights, the Disability Discrimination Act and U.N. Standard Rules" 25 *IND I J* 1-14 (1996).

<sup>35</sup> Section 8(2) The Disability Discrimination Act, 1995 (DDA).

<sup>36</sup> 2009 EWCA Civ 1213.

<sup>37</sup> Section 20.

<sup>38</sup> 2009 SCC OnLine Bom 732 : (2009) 5 Bom CR 227.

<sup>39</sup> Project on 'Enhanced Accessibility For Persons with Disabilities Living in Urban Areas' available at: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1258&context=gladnetcollect>, (accessed June 22, 2015).

<sup>40</sup> <http://www.disabled-world.com/news/australia-nz/banknote.php>.

<sup>41</sup> *Ibid.*

<sup>42</sup> Transport for London Invisible Disability Badge for Those Less Able to Stand

<http://www.disabled-world.com/news/uk/disabled-badge.php> accessed on 7th September, 2016.

<sup>43</sup> Marcia Rioux and Anne Carbert, 'Human Rights and Disability: The International Context' 2003) 10 (2) JDD available at [www.oadd.org/publications/journal/issues/vol10no2/download/rioux.pdf](http://www.oadd.org/publications/journal/issues/vol10no2/download/rioux.pdf) accessed 17 January 2015.

<sup>44</sup> Nilika Malhotra, 'Disability Rights Movements in India: Politics and Practice', (2011) 6 EPW.

<sup>45</sup> Amratpal kaur, Understanding Disability: A Paradigm Shift towards Rights Approach with Special Reference to India, Westminster Law Review, Vol. 5, issue 1, 2015, available at [www.westminsterlawreview.org](http://www.westminsterlawreview.org).

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